

- (ii) The director shall adjust the effective age of a facility when major repairs, replacement, remodeling or renovation initiated after April 1, 1985, would result in a change in age of at least one (1) year. Such changes shall not increase the allowable property rental rate by more than three-fourths ($3/4$) of the difference between the adjusted property base determined in subsections (1)(a) and (1)(b) of this section and the rental rate paid to the facility at the time of completion of such changes but before the change component has been added to said rate. The adjusted effective age of the facility will be used in future age determinations, unless modified by provisions of this chapter.
- (iii) The director shall allow for future adjustments to the effective age of a facility or its rate to reimburse an appropriate amount for property expenditures resulting from new requirements imposed by state or federal agencies. The director shall, within twelve (12) months of verification of expenditure, reimburse the medicaid share of the entire cost of such new requirements as a one-time payment if the incurred cost for a facility is less than one hundred dollars (\$100) per bed.
- (d) At no time shall the property rental rate, established under subsection (1) of this section, be less than that allowed in subsection (1)(c)(ii), with the rate in effect December 31, 1988 being the base. However, subsequent to the application of this paragraph, before any rate increase may be paid, it must first be offset by any rate decrease that would have been realized if the provisions of this paragraph had not been in effect.
- (2) A "grandfathered rate" for existing facilities will be determined by dividing the audited allowable annual property costs, exclusive of taxes and insurance, for assets on hand as of January 1, 1985 by the total patient days in the period July 1, 1984 through June 30, 1985. The property rental rate will be the greater of the amount determined pursuant to subsection (1) of this section, or the grandfathered rate. The director shall adjust the grandfathered rate of a facility to compensate the owner for the cost of major repairs, replacement, expansion, remodeling and renovation initiated prior to April 1, 1985, and completed after January 1, 1985, but completed no later than December 31, 1985. For facilities receiving a grandfathered rate making major repairs, replacement, expansion, remodeling or renovation, initiated after January 1, 1986, the director shall compare the grandfathered rate of the facility to the actual depreciation, amortization, and interest for the current audit period plus the per them of the recognized cost of major repairs, replacement, expansion, remodeling or renovation, amortized over the American hospital association guideline component useful life. The greater of the two (2) numbers will be allowed as the grandfathered rate. Such changes shall not increase the allowable grandfathered rate by more than three-fourths ($3/4$) of the difference between the current grandfathered rate and the adjusted property base determined in subsections (1)(a) and section.

(3) The property rental rate per day of care paid to facilities with leases signed prior to March 30, 1981, will be the sum of the annualized allowed lease costs and the other annualized property costs for assets an hand as of January 1, 1985, exclusive of taxes and insurance when paid separately, divided by total patient days in the period June 30, 1983 through July 1, 1984. Effective July 1, 1989, the director shall adjust the property rental rate of a leased skilled facility under this paragraph to compensate for the cost of major repairs, replacement, expansion, remodeling and renovation initiated after January 1, 1985, by adding the per them of the recognized cost of such expenditures amortized over the American hospital association guideline component useful life. Such addition shall not increase the allowable property rental rate by more than three-fourths ($3/4$) of the difference between the current property rental rate and the adjusted property base as determined in paragraphs (a) and (b) of subsection (1) of this section. Where such leases contain provisions that bind the lessee to accept an increased rate, reimbursement shall be at a rate per day of care which reflects the increase in the lease rate. Where such leases bind the lessee to the lease and allow the rate to be renegotiated, reimbursement shall be at a rate per day of care which reflects an annual increase in the lease rate not to exceed the increase in the consumer price index for renters costs. After the effective date of this subsection ' if such a lease is terminated or if the lease allows the lessee the option to terminate other than by purchase of the facility, the property rental rate shall become the amount determined by the formula in subsection (1) of this section as of the date on which the lease is or could be terminated.

(4) (a) In the event of a sale, the buyer shall receive the property rental rate as provided in subsection (1) of this section, except under the conditions of paragraph (b) of this subsection or except in the event of the first sale for a freestanding skilled care facility receiving a grandfathered rate after June 30, 1991, whereupon the new owner shall receive the same rate that the seller would have received at any given point in time.

(b) In the event of a forced sale of a facility where the seller has been receiving a grandfathered rate, the buyer will receive a rate based upon his incurred property costs, exclusive of taxes and insurance, for the twelve (12) months following the sale, divided by the facility's total patient days for that period, or the property rental rate, whichever is higher, but not exceeding the rate that would be due the seller.

56-114. FREESTANDING SPECIAL CARE FACILITIES. For a freestanding special care facility which seeks to contract for the first time to provide medicaid services to recipients, the director shall determine payment for such facility as specified in rule.

56-117. PAYMENT OF SPECIAL RATES. The director shall have authority to pay facilities at special rates for care given to patients have long-term care needs not adequately reflected in the rates calculated pursuant to the principles set forth in section 56-102, Idaho Code. The payment for such specialized care will be in addition to any payments made in accordance with other provisions of this chapter. The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of section 56-102, Idaho Code, will be excluded from the computation of payments or rates under other provisions of this chapter. Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in section 56-102, Idaho Code.

56-120. PROPERTY REIMBURSEMENT FOR HOSPITAL-BASED SKILLED NURSING FACILITIES. In addition to the basic payment per patient-day of care, each hospital-based skilled care facility shall be paid on a prospective basis its actual property and utility costs per patient-day, to be determined by dividing its total projected property and utility costs, as calculated from the cost report selected for rate setting, by the total number of patient-days from the same cost reporting period.

56-131. MULTIPLE-USE PLANS. The director shall promulgate such rules, as the director deems advisable to enable and encourage facilities to adopt plans for offering additional services or programs within their institutions which will promote appropriate levels of care for recipients residing in their service areas and, as a result, achieve cost savings for the medicaid program. In developing such rules, the director shall consult with representatives of freestanding skilled care, freestanding intermediate care, freestanding special care, and hospital-based facilities.

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IDAHO CODE

ATTACHMENT II to
ATTACHMENT 4.19-D

General Laws

TITLE 56

PUBLIC ASSISTANCE AND WELFARE

CHAPTER.

1. PAYMENT FOR SKILLED AND INTERMEDIATE SERVICES, §§ 56-101 — 56-135.
2. PUBLIC ASSISTANCE LAW, §§ 56-201 — 56-244.
3. COUNTY COUNCILS OF PUBLIC ASSISTANCE, §§ 56-301 — 56-303.
4. COOPERATIVE WELFARE FUND, §§ 56-401 — 56-460.
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CHAPTER 1

PAYMENT FOR SKILLED AND INTERMEDIATE SERVICES

SECTION.

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DATE APPROVED _____
EFFECTIVE DATE _____
BY: TO CO. _____

56-101. Definitions. — Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and shall have the following meanings:

(1) "Appraisal" means the method of determining the value of the property as determined by a M.A.I. appraisal. The appraisal must specifically identify the values of land, building, equipment, and goodwill.

(2) "Assets" mean economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(3) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(4) "Director" means the director of the department of health and welfare or his designee.

(5) "Equity" means the new book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(6) "Facility" means an entity which contracts with the director to provide services to recipients in a structure owned, controlled, or otherwise operated by such entity, and which entity is responsible for operational decisions. In conjunction with the use of the term "facility":

1. "Free-standing intermediate care" means an intermediate care facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code;

2. "Free-standing skilled care" means a skilled nursing facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; (or)

3. "Free-standing special care" means a facility that provides either intermediate care, or skilled care, or intermediate care for the mentally retarded, or any combination of either, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; or

4. "Hospital-based" means a skilled nursing or intermediate care facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is owned, managed, or operated by, or is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code.

(7) "Forced sale" is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order.

(8) "Goodwill" means the amount paid by the purchaser that exceeds the net tangible assets received. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and

sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is nonallowable, nonreimbursable expense.

(9) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(10) "Interest rate limitation" means that the interest rate allowed for working capital loans and for loans for major movable equipment for intermediate care facilities for the mentally retarded shall be the prime rate as established by the Bank of America Corporation, San Francisco, California, plus one percent (1%) at the date the loan is made. All interest expense greater than the amount derived by using the limitation above shall be nonreimbursable; provided, however, that this interest rate limitations [limitation] shall not be imposed against loans or leases which were made prior to July 1, 1984. Said loans or leases being subject to the tests of reasonableness, relationship to patient care and necessity.

(11) "Intermediate care facility for the mentally retarded" means an habilitative facility designed and operated to meet the educational, training, habilitative and intermittent medical needs of the developmentally disabled.

(12) "Major movable equipment" means such items as accounting machines, beds, wheelchairs, desks, furniture, vehicles, etc. The general characteristics of this equipment are:

1. A relatively fixed location in the building;
2. Capable of being moved, as distinguished from building equipment;
3. A unit cost sufficient to justify ledger control;
4. Sufficient size and identity to make control feasible by means of identification tags; and
5. A minimum life of approximately three (3) years.

(13) "Medicaid" means the 1965 amendments to the social security act (P.L. 89-97), as amended.

(14) "Minor movable equipment" includes such items as wastebaskets, bedpans, syringes, catheters, silverware, mops, buckets, etc. The general characteristics of this equipment are:

1. In general, no fixed location and subject to use by various departments of the provider's facility;
2. Comparatively small in size and unit cost;
3. Subject to inventory control;
4. Fairly large quantity in use; and
5. Generally, a useful life of approximately three (3) years or less.

(15) "Net book value" means the historical cost of an asset, less accumulated depreciation.

(16) "Patient-day" means a calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care shall be deemed to exist.

(17) "Property costs" means the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The department may require and utilize an appraisal to establish those components of property costs which are identified as an integral part of an appraisal.

(18) "Reasonable property insurance" means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm's length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility's fiscal year shall not be considered reasonable.

(19) "Recipient" means an individual determined eligible by the director for the services provided in the state plan for medicaid.

(20) "Utilities" shall mean all expenses for heat, electricity, water and sewer. Utilities shall be exempt from the percentile cap. [I.C., § 56-101, as added by 1981, ch. 159, § 1, p. 271; am. 1984, ch. 118, § 1, p. 264; am. 1985, ch. 128, § 1, p. 312; am. 1986, ch. 87, § 1, p. 250; am. 1988, ch. 155, § 1, p. 279.]

Compiler's notes. Former §§ 56-101 — 56-104 which comprised 1941, ch. 181, §§ 1-a, 1-b, 1-c, 1-d as added by 1947, ch. 237, § 2, p. 583; am. 1951, ch. 214, § 1, p. 442; 1972, ch. 196, §§ 6, 7, p. 483, were repealed by S.L. 1974, ch. 23, § 1, p. 633.

The word "or" at the end of subsection (6)2 was placed in parentheses by the compiler as surplusage.

The bracketed word "limitation" in subsection (10) was inserted by the compiler.

The reference "P.L. 89-97" in subdivision (13) is compiled as 26 U.S.C. §§ 72, 79, 213, 401, 405, 1401, 3101, 3111, 3201, 3221, 6051; 42 U.S.C. §§ 303, 401, 401a, 402, 418, 426, 603, 907, 1203, 1301, 1306, 1309, 1315, 1353, 1383, 1395 — 1396d; 45 U.S.C. §§ 228e, 228s — 228z.

Section 2 of S.L. 1984, ch. 118 is compiled as § 56-110.

Section 2 of S.L. 1985, ch. 128 is compiled as § 56-104.

Section 2 of S.L. 1986, ch. 87 is compiled as § 56-104.

Section 2 of S.L. 1988, ch. 155 is compiled as § 56-114.

Section 3 of S.L. 1981, ch. 159 read: "(1) An emergency existing therefor, which emergency is hereby declared to exist, subsection (c) of Section 56-104, Idaho Code, as enacted by Section 1 of this act shall be in full force and effect on and after its passage and approval.

"(2) Sections 56-101, 56-105, 56-106, 56-107, 56-130 and all other subsections or sections necessary to enable the director of the department of health and welfare to promulgate rules and regulations prior to January 1, 1982, to be effective January 1, 1982, shall be in full force and effect on and after July 1, 1981.

"(3) Section 2 of this act and all other codified sections of this act shall be in full force and effect on and after January 1, 1982."

Sec. to sec. ref. This chapter is referred to in §§ 31-3502 and 32-1008A.

Cited in: Idaho County Nursing Home v. Idaho Dep't of Health & Welfare, 120 Idaho 933, 821 P.2d 988 (1991).

PART A.

GENERAL PROVISIONS

56-102. Principles of prospective rates and payment. — The following principles are inherent in this chapter:

(1) Base rates shall be set by the director prospectively, on an annual basis by class of facilities, and shall be fixed for each class as determined in the manner established by this chapter; and

(2) Prospective base rates shall be established by class not lower than the level which is determined to be adequate to reimburse the nonproperty costs of each facility which is economically and efficiently operated and to provide care which meets the needs of each recipient, in compliance with applicable standards; and

(3) Prospective payment rates established pursuant to this chapter shall take into account economic conditions and trends during the period to be covered by such rates. [I.C., § 56-102, as added by 1981, ch. 159, § 1, p. 271.]

Compiler's notes. Former § 56-102 was repealed. See compiler's notes to § 56-101.

56-103. Prospective base rates by class of facilities. — (a) The director shall fix the maximum base rate for each class of facilities, using the method specified in part B or C of this chapter, whichever is applicable, by determining the standard deviation from the mean of the range of nonproperty costs of care per patient-day for each class and multiplying the standard deviation for each class by two (2). Where the results of that multiplication is:

- (1) Less than three dollars (\$3.00), all facilities in the class shall be paid up to the one hundredth percentile for such class;
- (2) Three dollars (\$3.00) but less than six dollars (\$6.00), all facilities in the class shall be paid up to the ninetieth percentile for such class;
- (3) Six dollars (\$6.00) but less than twelve dollars (\$12.00), all facilities in the class shall be paid up to the eightieth percentile for such class; or
- (4) Twelve dollars (\$12.00) or greater, all facilities in the class shall be paid up to the seventy-fifth percentile for such class.

(b) The director may adjust the actual payment for an individual facility when it is determined, in accordance with section 56-106, Idaho Code, that such adjustment is necessary to reflect changing economic conditions and trends affecting such facility during the period in which such rate is in effect for such facility.

(c) The director may further adjust the actual payment for an individual facility when it is determined through audit and settlement, in accordance with section 56-107, Idaho Code, that such adjustment is necessary to reflect the costs of an economically and efficiently operated facility. [I.C., § 56-103, as added by 1981, ch. 159, § 1, p. 271.]

Compiler's notes. Former § 56-103 was repealed. See compiler's notes to § 56-101.

Sec. to sec. ref. This section is referred to in §§ 56-105, 56-110 and 56-120.

ANALYSIS

Compliance with federal statutes.
Inefficient operation.

Compliance with Federal Statutes.

The use of the percentile cap as enacted in this section to determine reimbursement is in compliance and conformity with the controlling federal statutes and is valid. Idaho County Nursing Home v. Idaho Dep't of Health & Welfare, 120 Idaho 933, 821 P.2d 988 (1991).

Inefficient Operation.

Where the Department of Health's findings of fact were inadequate to support its decision that nursing home exceeded Medicaid percentile caps due to inefficient operation, the matter was remanded to the Department of Health with instructions that the Department make specific findings of fact and con-

clusions of law with respect to the questions of whether nursing home was efficiently operated and to what extent its costs above the percentile cap were justified based solely upon the present evidentiary record, without the taking of any new or additional evidence. *Idaho City Nursing Home v. Department of Health*, 124 Idaho 116, 856 P.2d 1283 (1993).

56-104. Recapture of depreciation. — (a) Where depreciable assets that were reimbursed based on cost and were used in the medicaid program subsequent to January 1, 1982, and for which depreciation has been reimbursed by the director, are sold for an amount in excess of their net book value, depreciation so reimbursed shall be recaptured from the buyer of the facility in an amount equal to reimbursed depreciation or gain on the sale, whichever is less. Depreciation shall be recaptured in full if a sale of a depreciated facility takes place within the first five (5) years of seller's ownership after January 1, 1982.

(b) Depreciation shall be recaptured by the director from the buyer of the facility over a period of time not to exceed five (5) years from the date of sale, with not less than one-fifth ($\frac{1}{5}$) of the total amount being recaptured for each year after such date.

(c) Leases of facilities entered into on or after the effective date of this subsection shall be reimbursed in the same manner as an owned asset, with recapture of depreciation being effected against the buyer of the facility in the case where the facility's assets are sold by the lessor of the facility. Leases in existence prior to the effective date of this subsection shall be reimbursed at the rate established prior to such date for each such lease. Renegotiated leases shall be reimbursed at established rates, plus a reasonable annual increase. [I.C., § 56-104, as added by 1981, ch. 159, § 1, p. 271; am. 1985, ch. 128, § 2, p. 312; am. 1986, ch. 87, § 2, p. 250.]

Compiler's notes. Former § 56-104 was repealed. See compiler's notes to § 56-101.

Sections 1 and 3 of S.L. 1985, ch. 128 are compiled as §§ 56-101 and 56-108, respectively.

Sections 1 and 3 of S.L. 1986, ch. 87 are compiled as §§ 56-101 and 56-108, respectively.

Subsection (1) of section 3 of S.L. 1981, No. 159 provided that subsection (c) of this section should be in full force and effect on March 30, 1981; subsection (3) provided that subsections (a) and (b) should be in full force and effect January 1, 1982.

Sec. to sec. ref. Sections 56-104 through 56-107 are referred to in § 56-130.

ANALYSIS

Application.

Constitutionality.

Application.

This section did not violate the procedural due process rights of the purchaser of the health care facility where this section was enacted before the purchase was consummated; the state was not required to give a hearing as to the effects of this section's application prior to the time of the purchase of the health care facility. *Sandpoint Convalescent Servs., Inc. v. Idaho Dep't of Health & Welfare*, 114 Idaho 281, 756 P.2d 398 (1988).

Constitutionality.

Because there is a conceivable basis for recapturing depreciation from the buyer of a nursing home for depreciation previously paid to the seller as a cost of providing medical care, this section cannot be categorized as arbitrary, and it does not violate substantive due process. *Sandpoint Convalescent Servs., Inc. v. Idaho Dep't of Health & Welfare*, 114 Idaho 281, 756 P.2d 398 (1988).

56-105. Prospective payments. — Not later than November 30, 1981, the director shall establish by rule to be effective January 1, 1982, as determined and agreed upon pursuant to section 56-130, Idaho Code, and in accordance with section 56-135, Idaho Code, a uniform mechanism for monthly payment to facilities of such amounts as are appropriate to reflect the actual payment per patient-day of care provided to recipients by each facility in each class, as determined pursuant to section 56-103, Idaho Code, and part B or C, whichever is applicable, of this chapter. [I.C., § 56-105, as added by 1981, ch. 159, § 1, p. 271.]

Sec. to sec. ref. This section is referred to in §§ 56-110 and 56-120.

56-106. Adjustment of prospective payments. — Not later than November 30, 1981, the director shall establish by rule to be effective January 1, 1982, in accordance with section 56-135, Idaho Code, uniform definitions, standards, and procedures for individual facility adjustments to prospective payments established for each class of facilities, during the fiscal year in which they are effective for each such facility, which are based on determinations made and agreements reached pursuant to section 56-130, Idaho Code. Such adjustments may be made periodically but shall occur not more often than twice for each facility's fiscal year in which the rate is effective. [I.C., § 56-106, as added by 1981, ch. 159, § 1, p. 271.]

Sec. to sec. ref. This section is referred to in § 56-103.

56-107. Audit and settlement of prospective payments. — Not later than November 30, 1981, the director shall establish by rule to be effective January 1, 1982, in accordance with section 56-135, Idaho Code, uniform standards and procedures for cost reporting by, audit of, and settlement with individual facilities in each class concerning prospective payments made to such facilities as established or adjusted under this chapter. Such standards and procedures shall reflect determinations made and agreements reached pursuant to section 56-130, Idaho Code. [I.C., § 56-107, as added by 1981, ch. 159, § 1, p. 271.]

Sec. to sec. ref. This section is referred to in §§ 56-103, 56-110 and 56-120.

56-108. Property reimbursement — Facilities will be paid a property rental rate, property taxes and reasonable property insurance. — The provisions of this section shall not apply to hospital-based facilities which are subject to the provisions of section 56-120, Idaho Code, or to intermediate care facilities for the mentally retarded which are subject to the provisions of section 56-113, Idaho Code. The provisions of this section are applicable to all other facilities. The property rental rate includes compensation for major movable equipment but not for minor movable equipment. The property rental rate is paid in lieu of payment for amortization,